



Legal Update

November 2015

The SJC concludes that postings on a defendant's Facebook page did not constitute a "threat" under the state's anti-stalking statute.

Commonwealth v. Michael Walters, 472 Mass. 680 (2015):

Background: The defendant, Michael Walters (hereinafter referred to as "Walters") met the victim in the late 1990s and they started dating. At some point they purchased a home together and eventually became engaged but never married. One evening in July 2007, Walters and the victim's son became involved in a physical altercation which led to the victim calling off their engagement.

After the break up, Walters told the victim there would be "repercussions" if she left him. Walters began to pester the victim by following her when she left the house. On one occasion, Walters told the victim he was a sniper in the military and that he owned many guns. One evening Walters was cleaning his gun when the victim returned home he said "one shot, one kill." Although Walters never spoke directly to the victim, he made these statements when she was around. When Walters' behavior escalated, the victim applied for a restraining order and Walters moved out of the house they shared.

At some point in December, the victim began dating a Rhode Island police officer, who was identified as "Stephen." Walters accused the victim of having an affair with "Stephen" while they were together. In the following months, Walters moved his construction equipment

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throughout the property that the victim co-owned with him preventing the victim from being able to park her vehicle. He also removed all the lightbulbs from the exterior lights which created stress for the victim as she tried to enter her home. Walters continued to pester the victim while the restraining order was in effect. He was permitted access into the house so he could remove his belongings. Walters removed the stove, refrigerator, and a bed and shut off the water to the house. After many months of incidents, the victim moved out of state to Rhode Island.

The victim's boyfriend, "Stephen," was also harassed and had numerous complaints filed against him by Walters. Since he was concerned what other information Walters was circulating, he looked on Walters' Facebook page and saw a picture of Walters holding a gun. On a separate page entitled "Favorite Quotations" was the statement: "Make no mistake of my will to succeed in bringing you two idiots to justice." The page also indicated that the defendant was a committee member of the "Governors [*sic*] Task Force on Police Corruption" and included images of the singer Rihanna and of a St. Louis Rams helmet. The victim in this case was terrified when she saw the posting on Facebook. Walters was charged and eventually convicted on numerous offenses, but in particular he was convicted of stalking pursuant to G.L. c. 265, § 43(g).

Walters appealed his conviction and argued that that a posting to the Web site Facebook did not constitute a threat within the meaning of the stalking statute.

Conclusion: The SJC held that while the defendant's page could be considered "vaguely ominous or disturbing," it was not reasonable to conclude that he intended to place the victim in fear of imminent bodily harm.

Regarding the threat component of the stalking statute, the SJC held that "for a defendant to make a threat that meets the requirements of § 43 (a) (2), both the defendant must intend to place the victim in immediate fear that physical harm is likely to occur and the victim's fear must be reasonable. The reasonableness of the victim's fear depends in part on "the actions and words of the defendant in light of the attendant circumstances" Also, "although communication of a threat to its intended victim is not expressly required under § 43 (a) (2), . . . evidence of the defendant's intent to communicate the threat through direct or indirect means is necessary. Where communication of the threat is indirect — for example, through an intermediary — the Commonwealth must prove beyond a reasonable doubt that the defendant intended the threat to reach the victim." Consequently, "although the victim testified that she was terrified when she viewed the page her subjective reaction is not the crux of the inquiry. Rather, it is necessary to focus on the content of the page in the context of the past and present relationship between the defendant and the victim to determine whether there was sufficient evidence of the defendant's intent to threaten the victim and whether the victim's fear was reasonable.

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The SJC first considered the photograph posted on the Walters' Facebook page and determined that there was nothing "obviously menacing" about his facial expression, nor was there "a caption of any kind that might suggest the photograph was intended to evoke violence." Furthermore, there was no evidence presented that the defendant had ever threatened the victim with a gun or used one in her presence.

With regard to the quotation that was included on Walters' Facebook page, the SJC found that interpreting the post to be a violent message directed at the victim and her boyfriend was "speculative."

Despite its ruling, the SJC clarified that under a different set of facts a Facebook post could constitute a threat for purposes of the stalking statute, but nasty comments and pictures in questionable taste are not enough.

The SJC stated in its decision that "[a] person is guilty of stalking if he or she (1) willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress; and (2) makes a threat with the intent to place the person in imminent fear of death or bodily injury; the conduct, acts, or threats may be accomplished by means of electronic communication." *Id.* at 681.

The SJC also stated that "[t]here is no question that new technology has created increasing opportunities for stalkers to monitor, harass, and instill fear in their victims, including through use of Web sites. Where a defendant has posted a threat to a Facebook page that meets the requirements of G. L. c. 265, § 43(a)(2), and has engaged in a series of acts or pattern of conduct described in § 43(a)(1), the fact that the threat appears on the Internet is not a barrier to prosecution for stalking. Conduct, acts, or threats related to stalking may be accomplished by means of electronic communication, including Internet communications." *Id.* at 681.

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